Supreme Court, U. S.
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No. 78-1221

In the Supreme Court of the United States

OCTOBER TERM, 1978

ZED DANIELS,

Petitioner,

vs.

RICHARD L. KIESER,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

MEMORANDUM FOR THE PETITIONER IN REPLY

BARRY SULLIVAN
JEROME J. ROBERTS
TERRENCE HUTTON
FRANCES H. KRASNOW
Attorneys for Petitioner

Of Counsel:
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

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MEMORANDUM FOR THE PETITIONER IN REPLY

Respondent's memorandum in opposition to granting the petition for a writ of certiorari fails to address the central issue presented by petitioner. That issue is the unwarranted extension of the policy of prosecutorial immunity set forth in *Imbler* v. *Pachtman,* 424 U.S. 409 (1976) to factual situations and classes of persons for which the rationale underlying the policy of *Imbler* does not apply.

This Court has recognized that prosecutorial immunity is not absolute. *Imbler* v. *Pachtman, supra,* 424 U.S. at 430-31. Prosecutorial immunity is based solely on policy, not on the Constitution. That policy is in absolute contra-

vention of an individual's constitutionally protected rights. Petitioner argues that prosecutorial immunity should not be extended to fact situations and classes of persons for which there is neither logical basis or historical precedent to anticipate vexations or frivolous civil suits against prosecutors.[1] Prosecution witnesses such as petitioner lack the motives which concerned this Court in *Imbler*, including revenge, harassment or other reasons to interfere with prosecutorial discretion and decision-making. By implication, however, respondent asks this Court to extend to a prosecutor:

> "[A]n immunity broader than that to which he was entitled at common law; broader than is necessary to decide this case; and broader than is necessary to protect the judicial process." *Imbler* v. *Pachtman, supra,* 424 U.S. at 433 (White, J., concurring).

It is therefore respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

BARRY SULLIVAN
JEROME J. ROBERTS
TERRENCE HUTTON
FRANCES H. KRASNOW
Attorneys for Petitioner

April 17, 1979

Of Counsel:
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

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[1] This is a case of first impression. Petitioner and respondent have not found another prosecution witness case in more than a hundred prosecutor-defendant cases.